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| 09/760,366 | 01/12/2001 | Donald R. Boys | P665 | 1589 |

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| EXAMINER | |
|---|---|
| PHAM, THOMAS K | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2121 | |

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/760,366 | BOYS, DONALD R. | |
| | Examiner | Art Unit | |
| | Thomas K. Pham | 2121 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *12 July 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-42* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

***Response to Amendment***

1. This is in response to the request for continued examination (RCE) filed 07/12/2005.

2. Applicants arguments with respect to claims 1-42 have been consider but they are not persuasive.

## Quotations of U.S. Code Title 35

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

## Claim Rejections - 35 USC § 102

5. Claims 1-42 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,606,668 ("MeLampy").

**Regarding claim 1**

MeLampy teaches a network-based hardware and software system for enabling priority-based Internet access telephone number switching from a lower priority access number to a higher priority access number during a data session through monitoring current connection states of a user node connected to the network during session and comparing those states with current states of known alternate access numbers available to the user node during the network session (col. 3 lines 35-49), comprising:

*a CTI-switch for establishing call connections and performing call switching according to instruction formulated through the monitoring* (col. 3 line 63 to col. 4 line 11, "provides a method for routing ... for the lowest cost". It should be noted that VoIP network is inherently and well known in the art to include a CTI-switch.).

*a network-hosted part of a software application for monitoring the current user-node connection states and the current states of the alternate access numbers and for directing the CTI-switch function based on results of the monitoring* (col. 2 lines 62-66, "Existing ACD systems provide ... for correct implementation of procedures");

*at least two network-access nodes connected to the network, the access nodes each accessible through dialing a network-access number from the user node* (col. 3 lines 42-46, "In an automatic call ... wireless communication tools"); and

*a client-hosted part of the software application for listing access numbers, configuring priority states to the access numbers and for communicating the pertinent data to the network-hosted part of the software application, characterized in that a user connected to the network using a lower priority access number may continue the network session while a higher priority access number available to the user's node is identified from a list of alternate numbers through the monitoring performed by the network-hosted software application during the session, the identified number, also identified as currently accessible to the user's node, is either secured by the CTI-switch on behalf of the user, the user's node then disconnected and then re-connected to the secured number or rendered to the user in a network notification after which, the user may manually disconnect and then reconnect to the available number* (col. 10 line 60 to col. 11 line 18, "Initially, at step 172, the ACD ... selected SSP and carrier combination").

**Regarding claims 2, 17 and 28**

MeLampy teaches the network accessible through the access numbers is the Internet network (col. 5 lines 47-65).

**Regarding claim 3**

MeLampy teaches the Internet is access through a telephony network (col. 3 lines 18-22).

**Regarding claim 4**

MeLampy teaches the telephony network is the public-switched-telephony-network (PSTN) (col. 3 lines 18-22).

**Regarding claims 5-7**

MeLampy teaches the priority characteristics of the access numbers include at least the access and connection costs of using the numbers (col. 6 lines 15-26).

**Regarding claim 8**

MeLampy teaches the priority characteristic includes bandwidth characteristics of the associated network-access nodes (col. 3 lines 57-62).

**Regarding claim 9**

MeLampy teaches a network-access number associated with a network-access node performing at a higher bandwidth retains higher priority rating (col. 7 lines 51-61).

**Regarding claim 10**

MeLampy teaches priority characteristics for a network-access number include both cost characteristics and bandwidth characteristics of the associated network-access server node (col. 7 lines 49-53).

**Regarding claims 11 and 19**

MeLampy teaches the network-hosted part of the software application is hosted at the CTI-switch (col. 10 lines 60-66).

**Regarding claims 12 and 24**

MeLampy teaches the client-hosted part of the software application communicates to the network-hosted part of the software application through a telephone-access number and interactive-voice-response interaction (FIG. 1).

**Regarding claims 13 and 21**

MeLampy teaches the network-hosted part of the software application is hosted by network-connected server node (FIG. 1).

**Regarding claim 14**

MeLampy teaches the network-hosted part of the software application communicates to the CTI switch through a network interface (col. 5 lines 47-65).

**Regarding claim 15**

MeLampy teaches the network-hosted part of the software application communicates with the client-hosted part of the software application through an Internet path (FIG. 1).

**Regarding claim 16**

MeLampy teaches a software-control application for enabling priority-based Internet access telephone number switching from a lower priority access number to a higher priority access number during a data session conducted by a user connected to a data-packet-network through one of a list of available access numbers (col. 3 lines 35-49) comprising:

*a network-hosted part of the software application for initiating and directing the priority-based number switching based on monitored result* (col. 2 lines 62-66, "Existing ACD systems provide ... for correct implementation of procedures");

*a client-hosted part of the software application for configuring at least one access number list including associated priority characteristics including those of one or both of call connection cost and bandwidth, and for communicating the listing characteristics to the network-hosted part of the software application* (col. 7 lines 44-61, "After a local SSP receives ... selected SSP and carrier combination");

*a network-communication path between the client-hosted part of the software application and the network-hosted part of the software application, the network-communication path enabling bi-directional communication between the parts of the software application, characterized in that the data connection for a user engaged in a data session on the data-*

*packet-network using a lower priority access number may during the session be switched according to software instruction from the connection using the lower priority access number to a connection using an identified higher priority access number during the same session without manual intervention required of the user* (col. 10 line 60 to col. 11 line 18, "Initially, at step 172, the ACD ... selected SSP and carrier combination").

**Regarding claim 18**

MeLampy teaches the user utilizes a personal computer for Internet connection using dial-up modem software. Connection to the Internet using dial-up modem software from a personal computer is well known in the art.

**Regarding claim 20**

MeLampy teaches the network-hosted part of the application includes modules for monitoring a user connection, for storing and presenting a list of ISP-access numbers, for determining higher priority from the list, and for instructing the CTI telephone switch (col. 7 lines 44-61).

**Regarding claim 22**

MeLampy teaches the network-hosted part of the software application includes modules for monitoring a user connection, for storing and presenting a list of ISP-access numbers, for determining higher priority from the list, for simulating an out-bound dialer, for Internet communication, for Internet navigation, for user notification, and for ringing-event detection (col. 7 lines 44-61).

**Regarding claim 23**

MeLampy teaches the network-hosted part of the application controls CTI switch function through a network gateway (FIG. 1).

**Regarding claim 25**

MeLampy teaches the network-communication path is established through a telephony network using connection-oriented-switched-telephony lines (col. 5 lines 47-65).

**Regarding claim 26**

MeLampy teaches the network-communication path is established through the Internet using Internet Protocols (FIG. 1).

**Regarding claim 27**

MeLampy teaches in an active data session conducted by a user operating a computerized node on a data-packet-network, a method for detecting an available higher priority Internet access telephone number from a list of known numbers and switching the connection of the computerized node to a connection using the higher priority access number during the session (col. 3 lines 35-49) comprising steps of:

- *connecting the computerized node to the network using a lower priority number included in the list of known numbers* (col. 6 lines 9-14, "SMP 14 is also in ... availability data in a database 46");
- *identifying the current lower priority number in the list of known numbers* (col. 7 lines 44-48, "After a local SSP receives ... has the lowest available rate" It should be noted that the identification of the current lower priority number is inherently included during the search for a lowest available carrier.);
- *comparing the priority assignment of the lower priority number with the priority assignments of other numbers in the list of known numbers* (col. 7 lines 44-48, "After a local SSP receives ... has the lowest available rate" Again, during the search for the

lowest available carrier must perform a comparison in order to get lowest available rate from a list of carriers);

- *identifying one or more higher priority numbers contained in the list of known numbers* (col. 7 lines 49-51, "Initially, the local SSP identifies ... the lowest available rate");
- *monitoring the identified higher priority numbers for one-or both of connection cost and availability* (col. 6 lines 15-26, "the stored cost ... or class of call") *and*
- *upon detecting an available higher priority number, switching the current data session connection using the lower priority access number to a connection using the higher priority access number* (col. 10 line 60 to col. 11 line 18, "Initially, at step 172, the ACD ... selected SSP and carrier combination").

**Regarding claim 29**

MeLampy teaches the computerized node is a personal computer accessing through an Internet Service Provider (ISP) and the list of access numbers comprise available alternative ISP numbers (FIG. 2).

**Regarding claim 30**

MeLampy teaches the listed access numbers represent numbers generic to more than one ISP (FIG. 2).

**Regarding claims 31, 33 and 35**

MeLampy teaches identification is performed in a CTI telephony switch by CTI software. It would have been obvious to one of ordinary skill in the art to utilize a CTI software to run all the functions in a CTI telephony switch.

**Regarding claims 32, 34, 36 and 41**

MeLampy teaches identification or monitoring is performed in an Internet server by server software. It would have been obvious to one of ordinary skill in the art to utilized a server software to run all the functions in an Internet server.

**Regarding claim 37**

MeLampy teaches the priority states of each listed access number equate with cost of connection and operation of each number from the location of the personal computer (col. 3 lines 28-30).

**Regarding claim 38**

MeLampy teaches monitoring includes calling the higher priority numbers periodically, the calls placed from the CTI telephony switch (col. 7 lines 43-61).

**Regarding claim 39**

MeLampy teaches monitoring includes calling the higher priority numbers periodically, the calls placed from a CTI telephony switch and initiated from within the Internet server, the server communicating with the switch through a network gateway (col. 7 lines 43-61).

**Regarding claim 40**

MeLampy discloses monitoring includes accessing connection servers associated with the higher priority access numbers, the connection servers providing availability status of the associated number (col. 7 lines 43-61).

**Regarding claim 42**

MeLampy teaches notification is sent to the personal computer upon detecting a higher priority number and switching is performed according to user response (col. 7 line 5-31).

***Response to Arguments***

In the remark the applicant argues that cited reference failed to disclose:

I) "switching of Internet access telephone numbers" as to claims 1, 16 and 27.

In response to applicant's arguments,

I) Prior art MeLampy (U.S. Patent No. 6,606,668) teaches managing a large network of switching end-point to switch telephone calls based on the time of day and day of week over a switched network such as Voice over IP (see col. 3 lines 35-38) in order to find a lower cost network for the user (see col. 4 lines 20-27).

It should be noted that the term "Internet access telephone numbers" provides no specific function(s) nor any special meaning at all. In fact, the term "Internet access telephone numbers" is broad enough to interpret it as "telephone numbers that uses the Internet as a global telephone network" or the well known term for that is "Voice over IP" (VoIP). As described above, MeLampy discloses switching telephone calls over a VoIP telecommunication network for cost saving purposes. Thus, MeLampy provides switching of Internet access telephone number to achieve maximum cost saving to the users similar to the applicant's claimed invention. Therefore, the limitations are met by the reference.

***Conclusion***

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Thomas Pham*; whose telephone number is (571) 272-3689, Monday to Thursday from 6:30 AM - 5:00 PM EST or contact Supervisor *Mr. Anthony Knight* at (571) 272-3687.

**Thomas Pham**
*Patent Examiner*

August 19, 2005

Anthony Knight
Supervisory Patent Examiner
Group 3600